MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
March 28, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:05 a.m. on Thursday, March 28, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Marc Randazza, Randazza Legal Group
Allen Lichtenstein, American Civil Liberties Union
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool
Steve Balkenbush, Nevada Public Agency Insurance Pool
Rebecca Bruch, Nevada Public Agency Insurance Pool

Kenneth A. Carabello, Vice President Operations, Liberty Healthcare Corporation
Jayne Shale, Liberty Healthcare Corporation
Richard Whitley, M.S., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Elizabeth Neighbors, Ph.D., Director, Mental Health Developmental Services, Lake's Crossing Center
Christy Craig, Office of the Public Defender, Clark County
Robert Compan, Farmers Insurance Group
David Goodheart, American Insurance Association
Jeanette K. Belz, Property Casualty Insurers Association of America
George Ross, Las Vegas Metro Chamber of Commerce
Tray Abney, The Chamber, Reno-Sparks-Northern Nevada
Mark C. Wenzel, President, Nevada Justice Association
Diana Alba, Clerk, Clark County
Nancy Parent, Chief Deputy Clerk, Washoe County
Margaret Flint

Chair Segerblom:
Today we have Senate Bill (S.B.) 286.

SENATE BILL 286: Provides immunity from civil action under certain circumstances. (BDR 3-675)

Senator Justin C. Jones (Senatorial District No. 9):
I am presenting S.B. 286. The First Amendment of the United States Constitution guarantees the right to petition the government for redress and is one of the most important rights the citizens possess. Nevada addresses, upholds and protects this right to petition. Chapter 41 of *Nevada Revised Statutes* (NRS) protects citizens from civil liability for claims based upon protected communication. Protected communication must be made in good faith and be truthful. The provisions of NRS 41 are meant to deter frivolous lawsuits commonly known as Strategic Lawsuits Against Public Participation (SLAPP). These SLAPP lawsuits are primarily used to stop someone from exercising his or her First Amendment rights. When a plaintiff files a SLAPP suit, NRS 41 allows the defendant to file a special motion to dismiss the lawsuit. If the court grants a special motion, it must also award attorney's fees to the defendant. The defendant may also file a new lawsuit for compensatory damages, punitive damages, and attorney's fees and costs. In a recent decision, the Ninth Circuit Court of Appeals held that Nevada's anti-SLAPP provision in NRS 41 only

protects communications made directly to a governmental agency. The Court also held that Nevada provisions only protect defendants from liability and not trial. Finally, the Ninth Circuit Court concluded that in Nevada, there is no right to immediately appeal an order denying a special motion to dismiss a SLAPP suit.

The purpose of S.B. 286 is to address concerns raised by the Ninth Circuit Court of Appeals with regard to NRS 41. Marc Randazza will address how this legislation is good for defendants as well as businesses wanting to move into Nevada. He will also propose additional language to strengthen S.B. 286.

I have submitted my written testimony (Exhibit C).

Marc Randazza (Randazza Legal Group):
As a First Amendment attorney who practices nationwide, I have much exposure to anti-SLAPP legislation. I have also had much exposure to victims of SLAPP litigation. I defend defamation suits and bring SLAPP suits as a plaintiff's attorney. Frivolous lawsuits must be eliminated. Lawsuits often bankrupt the defendant.

For example, I had a case involving a gentleman who wrote an online newspaper for his community. He wrote some articles about how he did not like the plants that the community had planted at the entrance. This article offended the person who ran the homeowners' association. He sued the author of the article for defamation. We did win this case and were granted attorney's fees. The article's author and I thought we were vindicated; however, the plaintiff dissolved his LLC. The $186,000 attorney's fee award is a nice trophy but has meant nothing because the newspaper author's bank account was depleted. The costs, monetarily and psychological, were significant.

Chair Segerblom:
Will this bill make us like California?

Mr. Randazza:
Yes. As it is written, S.B. 286 is a fantastic bill.

I have some proposed amendments which will improve it more. I have imported some provisions from other states with similar laws. For example, Florida has a presuit notice requirement before a defamation claim can be filed. This is not a

new concept; Florida Statute 770.01 has been in place for 50 or 60 years. This would help by adding a degree of alternative dispute resolution and, therefore, lessen a burden on the courts.

I have also suggested utilizing some portions of California Civil Procedure Code 1030, which allows the defendant to seek a bond from the plaintiff if he or she has a reasonable probability of prevailing in the anti-SLAPP motion.

As it stands, this a great bill.

Chair Segerblom:
Does a party have to initiate a lawsuit, and then this anti-SLAPP law comes into play? Or does the party being threatened with the lawsuit go into court with the claim of the threat of the SLAPP lawsuit and stop the suit before it starts?

Mr. Randazza:
This is a special motion to strike or to dismiss, so the plaintiff would still have to initiate the litigation.

Chair Segerblom:
For example, you, Mr. Randazza, are sued. You think this is a frivolous lawsuit because it is enacted to prevent you from expressing your First Amendment rights, and that is when your attorney initiates the anti-SLAPP litigation?

Mr. Randazza:
Correct. The lawyer would quickly initiate the anti-SLAPP law so that the First Amendment mettle of the case could be tested. Otherwise a motion to dismiss, if pleaded correctly, is easily achieved; then comes an expensive and long-standing discovery, and by the time the win comes to the defendant, it is a Pyrrhic victory.

Chair Segerblom:
Absolutely.

Senator Ford:
Why was that complaint about the plants considered a public concern?

Mr. Randazza:
It is a public concern if it is important to one's community. It was a matter of governance for his community.

Senator Ford:
Does caselaw define the issue of public concern for purposes of anti-SLAPP statutes?

Mr. Randazza:
Yes. Nevada's courts would be able to rely upon robust caselaw in California, Washington and Oregon in order to define those terms.

Senator Ford:
Is there a federal counterpart to anti-SLAPP?

Mr. Randazza:
Congressman Steve Cohen from Tennessee has proposed federal anti-SLAPP legislation. It has not passed. There may be issues of separation of powers with this federal legislation. Nevada should consider the benefit to business as well. Tech start-ups, for example, are not as attracted to Nevada as to California, Washington or Oregon because of these states' strong anti-SLAPP laws.

Senator Ford:
What is the definition of public concern relative to the caselaw definition?

Mr. Randazza:
Public concern is broadly defined. Public concern is a matter of interest to multiple people. It does not necessarily have to be a matter of governance. Public concern can even be said to be matters of local importance, local governments, local news. It would not be a narrow definition. Any statute needs to make the term public concern broad. There is caselaw in the handout I have provided to you (Exhibit D). I can also provide the Committee with follow-up research if that is something that concerns you.

Chair Segerblom:
In response to Senator Ford's questions, is this based on other states that have already enacted anti-SLAPP laws?

Mr. Randazza:
Right.

Senator Hutchison:
If the issue of public concern is defined so broadly, it seems that any lawsuit could be defined that way. For example, partner disputes in commercial litigation could be a matter of public concern, right? Then we are now modifying the motion to dismiss standards for almost anything. Will we now have a lot of cases under this definition?

Mr. Randazza:
This bill drafted with the proposed amendments is not so broad that it encompasses every method of conduct in the State. It will just encompass whether a citizen is exercising his or her First Amendment rights.

Senator Hutchison:
In exercising a citizen's First Amendment rights on an issue of public concern, you admit the definition is very broad?

Mr. Randazza:
Correct. If I am speaking out about how an investigation is going, of course that is a matter of public concern. If I am speaking about the lack of a traffic light at an intersection, that is a matter of public concern. If I am speaking out about how a neighbor can mow his or her lawn, then that is not a matter of public concern.

Senator Hutchison:
What about how I treat my partners in my law firm? Is that a matter of public concern? Could it be construed that way?

Mr. Randazza:
You may not have the privilege of making that a private matter. If it is a matter of internal politics at your law firm, that is a matter of private concern. However, if the *Las Vegas Sun* begins to report on a strike at your law firm and your associates are picketing in front of the building, then it has become a matter of public concern.

Senator Hutchison:
Why is there a clear and convincing evidence standard? For example, the moving party initially starts by preponderance of the evidence that in fact the claim is based on free speech-First Amendment rights. Then if the court determines the moving party has met that burden of proof, the court then has to determine by clear and convincing evidence a probability of prevailing on the claim. Now the burden shifts to the plaintiff. The defendant points out the First Amendment right demonstrated by preponderance of the evidence. Is that correct?

Mr. Randazza:
Correct.

Senator Hutchison:
The burden shifts now to the plaintiff who wants to win this lawsuit by clear and convincing evidence to the court in that early stage, which is a fraud standard—a very high standard in the law. What is the rationale for setting the standard that high?

Mr. Randazza:
The way it has worked in California, Washington and Oregon cases, the plaintiff needs to front load his or her case. The plaintiff needs to show this evidence is going beyond the motion-to-dismiss standard. It is a burden-shifting statute. But without that important element, defendants can be quieted and punished for exercising free speech rights simply by winning a case. That burden-shifting is important, necessary and proper.

Chair Segerblom:
Is the lawsuit for defamation? Or is the lawsuit characterized as being something designed to suppress First Amendment rights?

Mr. Randazza:
The lawsuit is anything designed to quash First Amendment rights. This proposed law will be most frequently used in defamation lawsuits. Possibly, this proposed law could also be used in intellectual property lawsuits. For example, the company Righthaven, which operates in southern Nevada, has over 200 cases on the federal docket. Some of the cases involved Righthaven suing bloggers for exercising their right to free speech.

Chair Segerblom:
So this anti-SLAPP law could be used against Righthaven?

Mr. Randazza:
Senate Bill 286 could have been used for those cases, yes.

Senator Jones:
Concerning section 3, subsection 3, paragraph (f) of S.B. 286, I received a request from District Judge Elizabeth Goff Gonzales that the rule be 7 days after notice. I agree with that. We do not want a circumstance in which motions are scheduled in the courts before someone has received notice of the motion.

If Nevada wants to attract tech start-up companies from other states, particularly California and Washington, S.B. 286 models those states that are properly using anti-SLAPP laws.

Mr. Randazza:
Texas has recently added anti-SLAPP legislation similar to those states on the West Coast. We are now competing with Texas as well to attract tech start-up companies for their business.

Senator Hutchison:
Can this law be narrowed to relate more specifically to the tech companies and what Nevada is trying to protect as opposed to the law being so broad concerning the definition of public interest?

Senator Jones:
We can discuss that.

Chair Segerblom:
Is there anyone else who would like to speak in support of S.B. 286?

Allen Lichtenstein (American Civil Liberties Union):
The question was raised of the public interest standard being so broad that that standard might swallow the rule. This issue was present when the ruling on *New York Times Co. v. Sullivan* 376 U.S. 254 (1964) became the standard for proving actual malice for public officials or public figures and matters of public interest. People dealing with these cases assumed that every defamation case would come under that ruling and require the actual malice standard. That has

not been the case. Far more of these cases are between particular individuals within a company or within a small business where the regular negligence standard does exist. I am less sanguine about the field of defamation law in general because it is so often used for the purpose of hurting a defendant with a lawsuit rather than having a real claim in the lawsuit. Senate Bill 286 progresses the lessening of using SLAPP lawsuits to hurt defendants—all of which amounts to an abuse of the court system. The public interest standard can be far-reaching and broad, but it is incorrect to say that that phrase swallows the entire rule.

Chair Segerblom:
Would anyone in opposition like to speak?

Wayne Carlson (Executive Director, Nevada Public Agency Insurance Pool):
With me are two attorneys who have defended anti-SLAPP cases, and they will both comment on S.B. 286.

Steve Balkenbush (Nevada Public Agency Insurance Pool):
Nevada Revised Statutes 41.635 through 41.670 have worked well. The NRS 41 requires that a special motion to dismiss be filed within 60 days. If the motion is granted, the case is over. Pursuant to the legislative history, that is the purpose for which this anti-SLAPP statute was crafted by the Legislature.

Chair Segerblom:
You are speaking from experience of defending a city or county?

Mr. Balkenbush:
Yes. As an attorney, I have defended a number of individuals who are public officials.

The NRS 41 has worked seamlessly. The concern is in regard to these shifting burdens of proof in amending this law. We do not have an objection if the Committee wants to expand NRS 41 to include the new provision to whom it relates. As it says in section 1, subsection 4 of S.B. 286: "Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum."

The one objection we do have is having the $10,000 damage award which would be levied upon the defendant if he or she does not prevail in a motion to

dismiss. These motions to dismiss have been valuable tools in defending these lawsuits. This penalty would conflict with the idea of an anti-SLAPP statute. Anti-SLAPP statutes were created to provide the opportunity to extricate the defendant from the lawsuit at the very beginning of the case. This penalty would be a disincentive for filing these motions to dismiss. The provision in S.B. 286, section 4, subsection 2 should be removed from the bill.

I am concerned with how the courts will struggle with the shifting burdens of proof. Three cases have passed through the Nevada Supreme Court and the Justices have had no problems with any provisions in the existing statute. The Supreme Court had no problem interpreting the provisions and breadth of the statute. The Court has found no irregularities in the statute. If the statute works, keep it the way it is.

Senator Ford:
There is a clear and convincing standard in S.B. 286 that the defendant must meet to dismiss a SLAPP suit, is that correct?

Mr. Balkenbush:
Yes, that is correct. That is a confusing provision. Under existing statute, the defendant files a motion to dismiss and provides the proof to the court. Then the plaintiff provides proof to the court as a motion for summary judgment standard. Then the court decides the case.

The proposed change in the law is that the defendant files the motion to dismiss, which is treated as a motion for summary judgment. The court would determine whether there was a good faith communication, a matter of public concern. If so, as the law stands now, the defendant has won. Senate Bill 286 goes beyond that. The burden shifts to the plaintiff to prove that his or her case would be sustained on clear and convincing evidence standard. This unduly complicates NRS 41. Under S.B. 286, the plaintiff would have a higher burden of proof than he or she currently has. This whole provision becomes murky.

Senator Ford:
That is my question. If the plaintiff actually prevails upon the clear and convincing standard, which is a high standard, why should he or she not receive a $10,000 award if he or she won?

Mr. Balkenbush:
He or she would not get a reward just by proving through clear and convincing evidence. The motion to dismiss would be defeated. In order to get the $10,000 award, he or she would have to win the case. The provision of the clear and convincing evidence applies to the motion to dismiss at the beginning of the case. The defendant must prove his or her motion to dismiss; the plaintiff, in order to defeat that, must prove his or her case by clear and convincing evidence. That does not end the case, though. That is just the motion to dismiss. That is all this provision applies to: a special motion to dismiss. If the plaintiff proves by clear and convincing evidence a probability of prevailing on the claim, then the case will continue on to discovery. It may go to a trial. All that the clear and convincing evidence standard does is relate to the special motion to dismiss.

Senator Ford:
So if the plaintiff defeats the motion to dismiss on the clear and convincing evidence standard and ultimately wins the case, he or she can get $10,000?

Mr. Balkenbush:
That is correct.

Senator Ford:
But if the defendant wins on a special motion to dismiss, he or she gets $10,000?

Mr. Balkenbush:
That is correct. The defendant gets $10,000 if he or she wins on the motion to dismiss. There is a provision for attorney's fees and costs for the plaintiff, if he or she prevails.

Senator Ford:
But my question remains the same. If a defendant wins and proves that the plaintiff has brought a SLAPP lawsuit against the defendant, why should the defendant not get $10,000?

Mr. Balkenbush:
The defendant should get $10,000. We do not object to the defendant getting paid $10,000. This is what we object to: the defendant files the motion to dismiss and that motion is defeated; although the defendant does not lose the

case, yet the defendant is still subjected to a $10,000 award to the court because he or she lost the motion to dismiss.

That, however, is not the existing law. The concern is that S.B. 286 would be a disincentive for defendants to extricate themselves early in the case by filing these motions to dismiss.

Senator Brower:
This needs to be clear: are the lawsuits SLAPP suits and the Nevada statutes are anti-SLAPP statutes, right?

Mr. Balkenbush:
That is correct.

Senator Brower:
Can you give an example of a typical SLAPP lawsuit from your own experience?

Mr. Balkenbush:
I can. One case that I handled involved a former employee of a district attorney's office who did certain things involving drugs and alcohol. This employee was also working at a school as an intern to be a counselor. The district attorney learned of those problems and made those problems known to the school district. The district attorney was then sued by the former employee for defamation. I raised the concern of the anti-SLAPP statutes to the court. The district attorney had learned of this employee's problems and believed that these problems were issues of public concern, mainly, that a person with problems concerning drugs and alcohol was in a school studying to be a counselor. Those problems were raised as part of the defense to the defamation lawsuit.

Senator Brower:
The district attorney's response to the defamation lawsuit was to describe it as a SLAPP lawsuit?

Mr. Balkenbush:
That is correct.

Senator Brower:
And you utilized the anti-SLAPP statutes as the district attorney's defense?

Mr. Balkenbush:
That is correct. The district attorney said it was a matter of public concern. He believed these problems that the employee had were truthful or, at least, had no knowledge of their falsity. The judge agreed and granted the motion. The case went to the Nevada Supreme Court and the Justices affirmed the ruling.

Senator Brower:
Your view is that the current anti-SLAPP statute worked properly in this case?

Mr. Balkenbush:
That is correct. And the Supreme Court Justices have had no trouble with the current anti-SLAPP statute. Nor have they had any trouble applying NRS 41 in any of the cases in which I have used it. I have had two cases go to the Nevada Supreme Court, and the Court has affirmed both of the decisions. The Court has not had any trouble interpreting any of the provisions in NRS 41. Some of the provisions proposed in S.B. 286 are cumbersome.

Senator Brower:
Might the outcome of the case be different if it is an individual not working for a county who could hire a lawyer experienced with these anti-SLAPP litigations? Would the current statute be just as logical and workable as in the case you just described?

Mr. Balkenbush:
The statute would be just as logical. What the statute does not do now is cover these private individuals. That is an expansion of the language proposed in S.B. 286. We are not opposed to keeping the language covering private individuals. The rest of S.B. 286 seems unduly cumbersome by penalizing people who file motions to dismiss, if they do not prevail on the motions. It prolongs the amount of time required to litigate these cases. Legislative history says cases should not be unduly lengthy. The existing anti-SLAPP statute works well as a practical matter.

Rebecca Bruch (Nevada Public Agency Insurance Pool):
I was one of the attorneys on the *John v. Douglas Cnty. Sch. Dist.,* 125 Nev. 746, 219 P.3d 1276 (2009) case that went before the Supreme Court, and the statute was upheld.

Mr. John filed union grievances along with a lawsuit. Every time someone at various stages of the grievance level would offer testimony, Mr. John would amend the lawsuit and add new parties. He did this trying to intimidate those who would offer testimony.

I had come across the anti-SLAPP statute and knew that the *John v. Douglas County School District* was the perfect case. Mr. John was clearly trying to intimidate people from participating in the serious claims made against him. District Judge David R. Gamble ruled in our favor. It then went to the Nevada Supreme Court on the issue of whether Nevada's anti-SLAPP statutes could apply to federal claims in State court. The Court ruled and upheld the Ninth Judicial District Court's ruling.

There were attorney's fees awarded because of the existing NRS 41.670.

I join in Mr. Balkenbush's comments on the chilling effect of the $10,000 award. I often file the special motion to dismiss on behalf of large entities that can absorb the cost if they must. But a serious conversation takes place warning the clients that if the motion to dismiss is lost, it could cost them $10,000. That is still a lot of money. The chilling effect comes because of a provision in NRS 41.670 subsection 1 that: "the court shall award reasonable costs and attorney's fees."

The 7-day provision in S.B. 286 is also problematic for judges and their calendars. The idea is to speed along or, possibly, stop litigation from the beginning. That places an undue burden on the courts. In our case, the judges know they must rule within 30 days, and they request an excusal from that time limit.

Chair Segerblom:
So they work around that?

Ms. Bruch:
Yes.

Chair Segerblom:
Would you like to point out anything else?

Ms. Bruch:
There was a question regarding whether a federal caselaw equivalent exists. It is called the *Noerr-Pennington* doctrine. I refer to that on federal claims and when I am in federal court.

Senator Ford:
I am still stuck on the $10,000 award. Looking at S.B. 286, section 4, subsection 2, "If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious"; that last phrase "finds that the motion was frivolous or vexations" makes a big difference. That makes the defendant more contemplative before they file a motion to dismiss. Those are hard standards to meet. The court seldom calls a motion frivolous or vexatious. The $10,000 award does not seem to be an automatic award just because the defendant does not win the motion to dismiss. The question now is why should the defendant not be penalized $10,000 for filing a motion to dismiss that was frivolous or vexatious?

Mr. Balkenbush:
You are correct. The frivolous and vexatious standard does exist in the proposed bill. But that standard exists regardless of S.B. 286. Under Rule 11 of the *Federal Rules of Civil Procedure*, a defendant cannot file frivolous and vexatious motions. There does not seem to be any other statute in Nevada law with a $10,000 penalty if the defendant loses the motion to dismiss. I agree that the frivolous and vexatious standard is a difficult standard. The $10,000 award is not a part of Nevada statute and can cause the defendant to pause moving forward with filing the special motion to dismiss.

Chair Segerblom:
What if S.B. 286 was amended to say "up to $10,000"?

Mr. Balkenbush:
I do not believe that $10,000 penalty should be levied on the defendant if he or she loses the motion to dismiss.

Chair Segerblom:
But the $10,000 award is only if the motion to dismiss is frivolous.

Mr. Balkenbush:
I understand.

Senator Brower:
I hear what you are saying, Mr. Balkenbush. Nowhere in the NRS or the *Nevada Rules of Civil Procedure* is a dollar amount penalty levied toward something someone does in litigation. This would be very unusual. Not to say that it should not be considered. There is still much work to be done on S.B. 286.

Senator Jones:
I am willing to work with Mr. Balkenbush and Ms. Bruch to resolve the concerns raised.

I do want to emphasize Senator Ford's point: the standard for award of attorney's fees on the plaintiff's side is clear and convincing evidence. On the defendant's side the standard is frivolous and vexatious. Both are very high standards.

With regard to Mr. Balkenbush's statement that NRS 41 has worked well in Nevada, I do not contest that. However, in light of the Ninth Circuit Court's decision last year, there is cause for concern. I echo Mr. Randazza's comments. If Nevada wants to compete for businesses which want to move in, we must compete with those states which have sufficient protection against SLAPP lawsuits: California, Washington and Texas.

Chair Segerblom:
Do these other states have the $10,000 award?

Senator Jones:
Senate Bill 286 came from the Washington statute. I will have to check with Mr. Randazza on that amount.

Mr. Balkenbush:
The $10,000 provision only exists in Washington. California, Oregon and Texas do not have this provision.

Chair Segerblom:
We will close the hearing on S.B. 286. Senator Hardy is presenting S.B. 323.

SENATE BILL 323: Revises provisions relating to incompetent defendants. (BDR 14-1063)

Senator Joseph P. Hardy (Senatorial District No. 12):
Senate Bill 323 addresses the issue of restoration to competency. People who have been accused of a crime are not always competent to stand trial and participate with their attorneys in their own defense. That is what led to the creation of S.B. 323. Section 1, subsection 5 of S.B. 323 amends NRS 178.417. This amendment gives the Division of Mental Health and Developmental Services (MHDS) the ability to establish a program for defendants who are determined to be incompetent to stand trial to receive restoration to competency while incarcerated (Exhibit E).

Chair Segerblom:
Are you bringing this bill for someone?

Senator Hardy:
Liberty Healthcare Corporation has been enacting what S.B. 323 addresses. The concept is to treat a criminal defendant on-site in a jail. In Clark County for example, the shackled criminal defendant then does not need to be flown to Lake's Crossing Center for treatment and release back to jail. Senate Bill 323 would allow criminal defendants to have their families and attorneys close to them. The care would be uninterrupted.

Ken Carabello (Vice President of Operations, Liberty Healthcare Corporation):
This program, as addressed in S.B. 323, exists in the State of California. The California Legislature responded to overcapacity in state hospitals and enacted a pilot program. California State Legislature put out a request for proposal, and Liberty Healthcare won the bid by proposing to do restoration of competency within a jail. The pilot site was set up in San Bernardino County.

As seen in the Jail-Based Restoration of Competency Program Fact Sheet (Exhibit F), the program has been in operation for 26 months. Patients began being seen in January 2011. The outcomes include 148 discharges from 162 admissions. The program is designed to provide restoration services to those who would benefit from a short-term restoration treatment program. These kinds of treatments move the system along more quickly and thus benefit the patients.

Chair Segerblom:
You are a private company, right?

Mr. Carabello:
Yes.

Chair Segerblom:
In Nevada, do you know who does this type of restoration to competency? What is the State of Nevada doing to address this right now?

Mr. Carabello:
Right now, Nevada does not have jail-based restoration to competency.

Chair Segerblom:
Nevada sends all criminal defendants to Lake's Crossing?

Mr. Carabello:
Yes. Or defendants are sent to outpatient care.

Chair Segerblom:
Is that outpatient care contracted through private agencies? Or is this all done by State employees?

Mr. Carabello:
Lake's Crossing is run by State employees.

Chair Segerblom:
Your company would contract with whom to do the restoration to competency?

Mr. Carabello:
The State, specifically MHDS.

Senator Hutchison:
If I am a defendant who has been declared incompetent, what rationale do I have to cooperate with a program for restoration to competency so that I am competent enough to stand trial?

Mr. Carabello:
It is the Legislature's opportunity to add this tool or ability to send the criminal defendant to either Lake's Crossing or to do the restoration within a jail, in addition to the outpatient provision already in statute. There are clear benefits for the criminal defendants who will receive this treatment. First, defendants

who can be restored are restored to competency more quickly in this jail-based program. Second, in California we have found that a criminal defendant who is restored to competency through an outpatient treatment can regress once back in jail because of the stress. The defendant is transferred again to the hospital to be restored to competency, and then he or she comes back to jail to await the trial. That is a bad outcome for all involved, including the criminal defendant.

Senator Hutchison:
The question remains: Why does the defendant want to submit to the restoration to competency only to stand trial in the near future?

Senator Hardy:
I asked the same question. But there is a constitutional right to stand trial. Those in the court system have an obligation to restore criminal defendants to competency so they can stand competent trial. It is a legal obligation.

Mr. Carabello:
There may be defense benefits for a transfer to Lake's Crossing, including the longer time to restore a defendant to competency. If the State is interested in a more efficient way to restoring defendants to competency, adding this tool will augment the State's efficiency.

Chair Segerblom:
Does S.B. 323 mandate the State to do the restoration to competency or does it just authorize it?

Mr. Carabello:
This bill authorizes the State to do this type of treatment.

Senator Jones:
In practice, would this restoration to competency be done at Clark County Detention Center?

Mr. Carabello:
There is not a plan to where this type of treatment would be hosted yet.

Senator Jones:
How many people do you plan to benefit in Clark County with S.B. 323?

Mr. Carabello:
That plan is not specific yet. San Bernardino has a 20-bed program. A second site is opening up in California with an additional 20-bed program soon. At low volumes, it is still economically feasible for a company to accomplish the treatment program.

Jayne Shale (Liberty Healthcare Corporation):
While this program has operated in California, it has also operated in Virginia. The Colorado governor's budget this year includes an appropriation to operate a program in Denver. Texas is also looking at legislation to implement a similar program. Texas's legislative budget board did a thorough analysis of jail-based restoration to competency, and that board came out in favor of recommending it to the state.

Richard Whitley, M.S. (Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services):
I support S.B. 323. This bill would expand the service system now in place and broaden the opportunities to provide further services. This bill would also allow MHDS to have a more formal role in the Clark County Detention Center.

The Division performed a data match from detention centers concerning mental health. In Washoe and Clark Counties, between 17 percent to 20 percent of inmates in detention centers had previously been seen by both outpatient and inpatient State mental health services. But in Clark County Detention Center, only 10 percent of inmates had been seen by mental health services. The assumption is that the jail in Clark County is where the mentally ill are first identified. Placing this restoration program within the jail will help with the strategy to place mental health services in the Clark County Detention Center.

Chair Segerblom:
Would there be a public bid?

Mr. Whitley:
Correct. First, regulations would need to be developed. That is a public process. The Division would establish the criteria for entering the program as well as the definition of the program. After that, the program would be built into MHDS's budget. A proposal would go to the State regarding financing the program. A contracted entity could also be petitioned. Lake's Crossing has a hybrid system that involves both private and public employees.

Elizabeth Neighbors, Ph.D. (Director, Mental Health Developmental Services, Lake's Crossing Center):
I support S.B. 323, and my reasons for doing so are outlined in my handout as a proposed amendment (Exhibit G). My assessment is that the program proposed in S.B. 323 would need to be substantially equivalent to the services provided now at Lake's Crossing. The clients would need to have a close replication to what our program involves.

Christy Craig (Office of the Public Defender, Clark County):
I have worked with the mentally ill population. I oppose S.B. 323 for many reasons.

There are many barriers to how this bill is enacted practically. When questions about a criminal defendant's competency are raised, the defendant is transferred to a competency court and evaluations are ordered. The evaluations must be provided by a doctor who meets statutory requirements. The doctor has 15 working days in which to provide the competency evaluations to the court. The court then makes findings. If the court finds that the defendant is incompetent and in need of treatment to become competent, the defendant is ordered, by statute, to a secure facility operated by the Department of Corrections.

The U.S. Court of Appeals for the Ninth Circuit determined that upon the finding of incompetency, the time allowed for that transfer is about 7 days. Nevada had violated that 7-day policy for a while; as a result, there has been federal oversight. That oversight ended a few years ago. The oversight was designed to make sure that the transfers took place in an appropriate time frame.

This new idea of jail-based competency treatment suggests that a private agency utilizes its doctors to screen which patients need restoration to competency. The doctors ask for 2 weeks or even up to 15 days to make this decision. Based on the Ninth District Court ruling concerning the time allotted for the State to provide treatment, 15 days is a problem. Additionally, S.B. 323 raises constitutional issues. If the jail-based restoration to competency does not have substantial equivalency to Lake's Crossing, that program will run afoul of the equal protection clause. There cannot be a separate, less able program in southern Nevada than in the north. For example, in the past if the nature of the incompetency had people with mental retardation out of custody and in need of legal process classes, if they lived in northern Nevada, they could go to Lake's

Crossing, out of custody, and take the necessary classes. If they lived in southern Nevada, they would have to go to jail and be transferred in custody to Lake's Crossing. That procedure ran afoul of the equal protection clause; now we treat those individuals who are out of custody in the south the same as we do those in the north.

There are significant problems treating criminal defendants inside a jail. The program in S.B. 323 seeks to cut off 20 criminal defendants by screening and treating them quickly. The length of time Lake's Crossing uses to return the criminal defendants to competency is appropriate. Lake's Crossing has no desire to keep patients any longer than necessary. Being treated within the jail does not necessarily lead to a faster treatment.

Additionally, in Exhibit F, 42 percent of patients are transferred to the State hospital for longer term treatment. That demonstrates part of the problem involved in the quick turnaround.

Lake's Crossing has quality assurance. Lake's Crossing Center is evaluated by outside agencies. Dr. Neighbors and her staff have checks and balances built into their program. That staff is wholly devoted to treating the mentally ill 24 hours a day, 7 days a week. The program that Liberty Healthcare is proposing involves having doctors present Monday through Friday, only long enough to treat the criminal defendant. That means that the burden of care rests on the jail rather than on a qualified treatment facility like Lake's Crossing. This is not an appropriate action for return to competency.

My other concern pertains to the safety of the medical staff while inside the jail and the space for treatment within the jail. There will also be a fiscal cost to the county and State to enact S.B. 323.

Senator Jones:
Would you agree that putting criminal defendants on a plane and flying them across the State to an aging facility is not optimal for the mental health of these defendants?

Ms. Craig:
Clark County deserves its own mental health treatment facility. Having a mental health facility within the county is optimal. But since that facility is nonexistent

in southern Nevada, Lake's Crossing provides the only other 24-hour quality alternative. Inside a jail, quality 24-hour care cannot be provided.

Senator Hardy:
Ms. Craig's points are well-taken. Care for the mentally ill is the concern of this bill. Jail-based care provides the opportunity to work with criminal defendants who continue to be in some kind of incarceration pending a trial. If restoration to competency can be done within the milieu in which they presently exist, there are advantages. Concerning the complaint of quick restoration, planes fly up to Lake's Crossing once or twice a week. However, the flying is a cost issue. Most concerns can be addressed in the regulation of the proposed program. Standards of quality are critical and can be regulated and maintained within the proposed program. Senate Bill 323 enables the care to be enacted locally. Having an attorney within the same locale is also an advantage to S.B. 323. The care is within the jail, in a safe and secure location where the criminal defendants receive the care needed.

Chair Segerblom:
Do you have a comment on the MHDS proposed amendment?

Senator Hardy:
I agree with the amendment. It is a friendly amendment and is incorporated into my amendment, Exhibit E.

Senator Hammond:
The concerns that Ms. Craig brought to light should be addressed. One involves the equivalency of care. How long has the program been in progress? Has California had any problem with federal scrutiny of the quality of care within the jails?

Mr. Carabello:
California's program has been in operation since January 2011. The issue of equivalency of care has not been raised as a concern.

Chair Segerblom:
Before California's jail-based restoration to competency, did the state transport criminal defendants out of the jail to a psychiatric facility?

Mr. Carabello:
Yes.

Chair Segerblom:
And now the restoration to competency is being done in the jail?

Mr. Carabello:
Yes. For San Bernardino County, the restoration is being done in the jail.

Chair Segerblom:
Seeing no one else in support or opposition to S.B. 323, Senator Roberson is now going to present Senate Bill 296.

SENATE BILL 296: Limits the recovery of damages arising from a motor vehicle accident under certain circumstances. (BDR 3-825)

Senator Michael Roberson (Senatorial District No. 20):
The Executive Summary of *The Potential Effects of No Pay, No Play Laws*, as seen in the Insurance Research Council booklet, gives excellent background on this kind of law throughout the Country.

> Uninsured motorists create problems for regulators, insurers and insured drivers. Regulators experiment with methods to encourage uninsured motorists to purchase insurance. Meanwhile, insurers must address resource issues in response to new regulations as well as deal with the costs of investigating and processing uninsured motorists claims. Insured drivers are affected through the premiums they pay for uninsured motorist coverage and because insurers will pass on a portion of the costs incurred by the actions of uninsured motorists. All parties would benefit from a decline in the number of uninsured motorists.

By the way, that is why I am cosponsoring Senator Denis's bill that seeks to address an uninsured motorist problem here in Nevada by providing drivers privilege cards. Let us return to S.B. 296 and the *No Pay, No Play* narrative.

> National estimates of the percentage of uninsured motorists have remained somewhat stable, currently hovering around 14 percent.

> Because of the problems associated with uninsured motorists, several states have taken steps to encourage uninsured motorists to purchase insurance coverage. "No pay, no play" laws are one example.
>
> No pay, no play laws prevent an uninsured motorist from collecting compensation for noneconomic damages arising from a traffic accident with an insured, at-fault driver. Noneconomic damages include compensation for pain and suffering, emotional distress, inconvenience and so forth. These no pay, no play laws are based on the belief that people who do not buy insurance coverage should not receive [certain insurance] benefits.
>
> The intention of no pay, no play laws is to relieve at-fault drivers who comply with state insurance requirements from having to compensate uninsured drivers for noneconomic damages. No pay, no play laws may also help reduce insurers' losses and the premiums charged to policyholders. With such laws in place, it is also believed that fewer motorists will operate without policies.
>
> State laws can vary in specifics. For example, in addition to targeting uninsured motorists, certain states also bar drunk drivers and drivers fleeing from a felony from collecting noneconomic damages, while other states only set limits to the amount of compensation that can be awarded.

In Nevada, there are compulsory automobile insurance laws. All Nevadans are required to have mandatory liability insurance only for their automobiles. As shown in the handout (Exhibit H), Nevada is also twentieth in the Nation in drivers who do not purchase insurance, thus adding to the financial burden and responsibility to those Nevadans who do abide by the law.

Senate Bill 296 will eliminate the ability of uninsured drivers to receive compensation for noneconomic damages while still compensating for the damage caused to their automobiles and medical bills should the uninsured parties be involved in accidents with insured drivers. But S.B. 296 will not allow uninsured parties to collect monetary damages for noneconomic damages such as pain and suffering.

Ten states have adopted such laws. These no pay, no play laws have proven to reduce the uninsured population while also reducing the cost for uninsured insurance claims for consumers in those states.

This bill has gleaned its best language from various parallel state statutes. Section 1, subsection 2 defines where this bill does not apply.

Accidents will happen, but it should not be the burden for those Nevadans who abide by the mandatory insurance laws. This commonsense law that allows auto accident victims in violation of the mandatory insurance laws to only be compensated for their actual damages.

Assemblyman Pat Hickey has also submitted testimony in support of S.B. 296 (Exhibit I).

Senator Brower:
The type of claimant in question would recover losses in terms of lost income, but special damages and general damages would not be recoverable?

Senator Roberson:
Correct.

Senator Brower:
The long list of exceptions in S.B. 296 do not seem quite fair. Are uninsured claimants or plaintiffs covered by the exceptions listed in section 1, subsection 2?

Senator Roberson:
I agree that is seems unfair. I have looked at other states' statutes and regulations with regard to no pay, no play. The states with similar provisions in their laws include Alaska, California, Iowa, Kansas, Louisiana, Michigan, New Jersey, North Dakota, Oklahoma and Oregon.

Senator Jones:
Both in your presentation and from insurance agents who have come to my office, I have noticed the use of the word "may"—as in may reduce the number of uninsured motorists, may reduce premiums. Could you provide some data from other states showing the actual impact of this kind of law?

Senator Roberson:
Please look at page 15 of *The Potential Effects of No Pay, No Play Laws* by the Insurance Research Council which shows clearly that no pay, no play laws reduce the number of uninsured motorists and premium costs.

Senator Jones:
On average, that study showed the reduction of uninsured motorists at 1.6 percent?

Robert Compan (Farmers Insurance Group):
Yes, the 1.6 percent reduction is accurate. That is the average of the states that have enacted the no pay, no play laws.

Senator Jones:
What happens when an insured party accidentally allows his or her insurance to expire and gets in an accident. Will the exceptions of section 1, subsection 2 apply to him or her?

Senator Roberson:
That exception is listed in section 1, subsection 2, paragraph (g).

Senator Jones:
The exception in paragraph (g) is limited to 30 days?

Senator Roberson:
Yes. I am open to suggestions for amendments.

Senator Ford:
The reduction of uninsured motorists by only 1.6 percent is not very persuasive. Should there then be a cap upon the amount of damages awarded as opposed to banning the plaintiff from receiving any damages award at all?

Senator Roberson:
Yes, I would consider a cap on the award as an option.

Senator Hutchison:
By causing more residents to become insured, what are the benefits to the State and local governments? What is the public benefit, for example, toward hospitals treating victims who are hit by uninsured motorists?

Mr. Compan:
The benefit is a reduced price in auto insurance. Those who choose to get around the laws should not benefit from the laws. This Legislature has created public policy to try to address that issue. For example, in 2007 in Nevada, there was $13.1 million in uninsured motorists' claims. As pointed out in my written testimony (Exhibit J), in 2012, that equates to $14,451,000. That is a large amount of money to come out of the pockets of Nevada insurance. Those who chose not to buy insurance are receiving a free ride on Nevada highways.

Chair Segerblom:
Will the insurance apply if someone has a 15/30 liability policy and the damage is over $15,000?

Mr. Compan:
No, that amount is just for uninsured motorists statistics. What you are talking about is the underinsured motorist coverage—a 15/30/10—which is someone who goes above the mandatory statutory limits of $15,000 per accident, $30,000 for the whole vehicle and $10,000 in property damage. The Nevada Liability Insurance Validation Electronically (LIVE) program would fine those who fail to comply with buying the mandatory minimum levels of insurance. In 2011, Senator David R. Parks sponsored legislation that would tier those fines. Farmers Insurance statistics concerning uninsured motorist payments had 190 claims resulting in $1,718,000 in 2010 and 209 claims resulting in $1,728,000 in 2011. The number of policies held have since dropped by about 30,000. We now insure about 223,000 households in Nevada. In 2012, 183 claims resulted in $1,608,000. These claims and monies are going to Nevadans who chose to not buy insurance.

This bill tries to address all the issues and possible exceptions faced by drivers in Nevada. This is good public policy. In *The Potential Effects of No Pay, No Play Laws* by the Insurance Research Council on pages 20 and 21, Figures 10 and 11 show Nevada has one of the highest uninsured motorist populations in the Nation. California's passage of no pay, no play laws in 1996 has substantially reduced the amount of uninsured drivers in the state. It is good public policy to not reward bad behavior.

Chair Segerblom:
But an uninsured motorist, if caught, already pays a substantial fine under current Nevada statutes.

Mr. Compan:
True. But the problem is that people take the chance of paying a fine by being uninsured.

Senator Jones:
I am always wary of solutions that do not fit the problem. Could we better solve this problem by making the fines stiffer for drivers who are uninsured?

Mr. Compan:
Through previous legislation, the fines have become stiffer. Originally, the fine was $250. Now the fines are tiered: $250, $500, $750. The insurance companies are reporting and tracking data on Nevada LIVE through the Department of Motor Vehicles (DMV). But that data comes from individuals who are insured. The DMV compiles that information through individuals who get driver's licenses and register vehicles in Nevada. The problem comes from those who choose to not be insured. Individuals might come from other states, not register in Nevada and do not have insurance. This is their means of skirting the law.

Senator Jones:
Could the Legislature then approach this problem by making an additional appropriation to the DMV to focus on tracking uninsured motorists and inducing them to comply with the laws?

Senator Roberson:
Mr. Compan said that would not be feasible. Though I do not know if that is true, I am open to suggestions. That idea, within the limits of the budget, could be something to consider.

Rather than punish individuals who do not have auto insurance, this bill was brought forth with the idea to bring the insurance rates down for Nevadans. This bill was also proposed to create an additional incentive for motorists to obey the law and obtain insurance.

Senator Ford:
Senate Bill 296 seems to disproportionately affect certain races and those of the lower socioeconomic demographic. Have you considered how this bill may affect that portion of the Nevada population?

Mr. Compan:
Insurance does not see race or socioeconomic status.

Senator Ford:
If this bill denies the right to pursue monetary compensation for pain and suffering to those in a car accident who do not have insurance, it will be those individuals without money to buy insurance who are a racial minority of lower socioeconomic status.

Mr. Compan:
Almost 80 percent of Nevadans are in compliance with the minimum standards of the law. That includes those of the demographic to which you speak. They are purchasing the mandatory required 15/30/10 liability insurance. What happens to poor people who are hit by motorists without insurance coverage? What recourse do they have to take care of the damages received? They will suffer from the fault of others who have skirted the laws.

David Goodheart (American Insurance Association):
I support this bill.

Jeanette K. Belz (Property Casualty Insurers Association of America):
I also support this bill, seeing as it is one more tool to help alleviate the problem of uninsured motorists.

George Ross (Las Vegas Metro Chamber of Commerce):
I agree with the proponents and heartily support this bill.

Tray Abney (The Chamber, Reno-Sparks-Northern Nevada):
I also agree with S.B. 296.

Mark C. Wenzel (President, Nevada Justice Association):
I oppose this bill. The Nevada Justice Association wishes every Nevadan had automobile insurance, but I know that is not the case. Underinsurance coverage is not mandated by the laws of Nevada.

Who will this bill affect? This will affect three groups of people: the poor, the uneducated and people with language barriers. These people do not try to skirt the laws; they do not have insurance because they cannot afford to have it. The choice for them is between food on the table or auto insurance.

Senator Ford:
What about those individuals of the same three groups you just mentioned who do in fact buy the insurance? Why should those people get an extra benefit by taking advantage of the same laws as everyone else?

Mr. Wenzel:
The issue is a person who causes damage to another individual. But this bill shifts the focus from the individuals who did the damage to the uninsured ones who received the damage. Because they did not buy insurance, which they were required to do, they therefore will be punished further. Nevada is punishing the poor, uneducated, non-English speaking people.

Senator Ford:
The punishment is intended for the person without automobile insurance. It may turn out to be a person who is poor or colored. But in actuality, it is just a person without insurance, right?

Mr. Wenzel:
Yes, sir.

This takes the responsibility of procuring insurance and turns it on its head. Instead of focusing on the wrongdoer or the person who causes harm, the focus goes to the injured person. That individual now will not get pain and suffering damages.

One of the earlier testifiers described pain and suffering damages. Pain and suffering under Nevada law includes such conditions as disability, disfigurement and a lifelong struggle with pain and suffering. Pain and suffering does not include someone who has a sore back for a week and later continues a normal life. Pain and suffering damages are some of the most significant form of damage for a person who has been catastrophically injured. For example, a client of mine purchased a vehicle from a coworker. That coworker had paid for 6 months of insurance and told my client that she was covered because the coworker had paid the premium on that insurance. The problem is that insurance cannot be purchased and given to someone else. One must buy insurance for oneself. My client was under the impression that she had insurance when she was struck head-on by an oncoming vehicle. My client has been in a wheelchair for 2 years and incurred hundreds of thousands of dollars in medical bills. For the next 40 years of her life, she is a wheelchair-bound

paraplegic. This bill would punish my client for making a mistake months earlier by thinking that the vehicle did have insurance upon purchased. Senate Bill 296 declares that Nevada believes that my client, who ignorantly made a mistake by not purchasing insurance, should not be fully compensated by the person who caused her to be a wheelchair-bound paraplegic with serious disfiguring injuries. That is not the correct public policy for this body to enact.

Senator Hutchison:
This bill imposes consequences on those who choose not to follow the law in its broadest terms. Right?

Mr. Wenzel:
Yes.

Senator Hutchison:
As policy makers, we propose laws in their broadest terms all of the time, would you agree?

Mr. Wenzel:
Yes.

Senator Hutchison:
For example, in Nevada if a business is not properly registered, that business cannot even initiate a lawsuit. As lawmakers, we decided that there will be consequences, even denying access to the court system if the law is not followed. Would you agree with that?

Mr. Wenzel:
I am not a policy maker. If you say so, I have no reason to disagree on that.

Chair Segerblom:
I want to point out that Nevada has a statute that does punish individuals who do not purchase insurance.

Mr. Wenzel:
I am in support of that. I want every Nevadan to have insurance and be fully insured. My association is not proposing that we should wish individuals who are not insured to be insured; we want them to be insured.

Chair Segerblom:
Before I close the discussion on S.B. 296, here are two letters of support to submit for the record (Exhibit K and Exhibit L).

Senator Kihuen:
We will now go to S.B. 419.

SENATE BILL 419: Revises provisions relating to marriage. (BDR 11-1107)

Senator Tick Segerblom (Senatorial District No. 3):
To perform a wedding under Nevada statute, one must either be a judge or a minister. This bill allows for a third, nonreligious avenue, that being notaries public, to perform marriages. The process to become a notary is more extensive and thorough than in the past. Notaries must complete a notary training class, go through a background check and obtain a surety bond. This bill allows the clerks to give subsequent training to the notary who wants to perform marriages. The impetus for this bill is that the First Amendment makes it unconstitutional to only allow religious people to perform marriages. The American Civil Liberties Union (ACLU) has brought a lawsuit against Diana Alba concerning the constitutionality of allowing marriages to be performed by ministers and not by sectarian individuals. Ms. Alba has been trying to resolve that lawsuit by coming up with a compromise. The compromise reached with the clerks and the ACLU is this bill. If S.B. 419 does pass, that lawsuit disappears and all is resolved.

Diana Alba (Clerk, Clark County):
The clerks have been trying to find a solution to this issue for years. Under statute, those who would like to perform marriages must first become a minister and then apply for a certificate of authority to perform marriages. Senate Bill 419 would work in a similar manner: a person would apply to become a notary public and then go through a second application process in order to gain authority to perform marriages. The application process includes a criminal background check and training by the county clerk.

The original thought behind the law enacted in the 1960s to limit the performing of marriages to ministers held marriage as an important institution. In fact, statute uses the word "solemnize" to display the solemnity of the occasion. Those who are characterized as responsible should be allowed the authority to perform marriages. Not only is the marriage ceremony important, but processing

and recording the proper paperwork after the ceremony has legal implications. That is why the notary public is an appropriate office for performing marriages—notaries public are responsible citizens who have proven themselves by posting a bond and taking notary training.

The clerks have looked at a number of options over the years. I have submitted a letter (Exhibit M) which indicates that not only the county clerks agree on this bill, but also the ACLU, the wedding chapel representatives and the Secretary of State's Office.

I would like to address concerns about fees for performing marriages. The fee for a deputy county clerk or justice of the peace to perform a marriage is $50, as seen in section 13 of S.B. 419. Wedding chapel owners from southern Nevada have asked to increase that fee. In the private sector, it is difficult to make any money off a $50 wedding. Yet, they feel compelled to offer a wedding at that price in order to compete with the charge for having a justice of the peace or a deputy county clerk perform the wedding. As county clerks, our role is to provide a simple civil marriage ceremony and not to compete with the private sector. In section 13 of this bill, the marriage ceremony fee is increased to $70. That increase is not there to generate a lot of revenue for the county; it is increased on behalf of the private sector.

Notaries public also have fees prescribed for different services which they provide. A standard fee of $75 for a notary to perform a marriage is included. The set fee is included in this bill because Senator Moises (Mo) Denis was concerned about notaries taking advantage of individuals by charging exorbitant fees. Ministers can charge whatever they choose.

The clerks have also included a $25 fee to apply for the certificate of authority to perform marriages. This is the only license or permit with no fee.

This bill provides for a temporary certificate because an individual might like the privilege of coming from out of state to perform, for example, a grandchild's wedding, but has no interest in performing any more. This provision is included so that those individuals do not have to pay for a permanent certificate.

Senator Brower:
How does the State determine whether an individual is a minister in order to perform a legal wedding ceremony? My concern is that it is just a certificate from the Internet.

Ms. Alba:
When current ministers apply for certificates of authority according to statute, they must provide an affidavit of authority from their churches or religious organizations. The affidavits must include that the ministers are a part of that church or religious organization, they are in good standing and they are authorized by the church to perform marriages. County clerks base their approval of the authority to perform marriages on that affidavit. It can come from any church, such as the Catholic diocese, the Latter-Day Saints Church or even an Internet-based church. We do not make a judgment call on which church provides the affidavit. The minister does need to provide that affidavit from his or her ecclesiastical authority.

Senator Hutchison:
I have gone through the process to obtain the authority to perform marriages. I have performed many weddings. Who makes up the coalition that agreed upon this procedure and what problem does this bill solve?

Ms. Alba:
This has been an issue since 2007 where different ideas have been proposed in each Legislative Session to open up the authority to perform marriages to nonreligious officials. Many different offices have been proposed—everything from members of the Legislature to officers in nonprofit and philosophical organizations. About a year ago, we had meetings with the county clerks. They felt that the option of notaries public was viable. I also met with Margaret Flint and her father-in-law George Flint as well as two chapel owners who have been in business for more than 40 years in southern Nevada. We all agreed that the notary idea would work. Mr. Lichtenstein of the ACLU had proposed the idea a few years ago. The Secretary of State had some concerns regarding keeping the 30,000 notaries within his line of responsibility. If the notaries apply through the clerks' offices, they will be in the clerks' databases.

Mr. Lichtenstein:
The ACLU had two problems with the law concerning who could perform marriages. First, there was a distinction between people with religious authority

and those who do not have religious authority wanting to perform wedding ceremonies outside of the courthouse or the marriage bureau. Our second issue concerns how the government determines who is religious. The process of determining this would get the government unduly involved in those kinds of ecclesiastical questions.

A lawsuit was filed challenging the Nevada law. One misgiving with pursuing this lawsuit involved the potential of eliminating the entire statute to allow ministers to perform marriages. If the lawsuit was pursued, then a whole group of individuals would not be allowed to perform weddings. That was not our purpose. The purpose was to provide an alternative to purely secular individuals and afford them the same opportunity to perform marriages. Through the thorough work of Ms. Alba and others who have contributed, we have cobbled together the best possible solution to this quandary. Senate Bill 419 allows purely secular people to perform marriages outside of the courthouse or the marriage bureau and solves the two aforementioned concerns. All action in the lawsuit has been suspended because we have made the presentation to U.S. Judge Philip M. Pro, District of Nevada, that S.B. 419 has been proposed and is under consideration. I hope S.B. 419 will pass and the lawsuit will not have to be revived.

Senator Hutchison:
If we pass this bill, will the people of Nevada now have a broad option concerning who will perform the marriage? And would complaints about limitations concerning religion, church or affiliation cease?

Mr. Lichtenstein:
Yes, the options are now more broad. The basis for concern facing nonreligious people who feel their options are limited would be eliminated.

Nancy Parent (Chief Deputy Clerk, Washoe County):
I have submitted a letter of support (Exhibit N) for S.B. 419 on behalf of Amy Harvey, County Clerk for Washoe County.

Margaret Flint:
I am representing various wedding chapels in Reno. I support this bill.

Florida has been using notaries for a while to officiate wedding ceremonies. This is not a new precedent.

Senator Kihuen:
Seeing no opposition and no one speaking as neutral, S.B. 419 is now closed.

Chair Segerblom:
Seeing no public comment and having no further business to be heard, the Senate Judiciary Committee is adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

_____
Ilena Madraso,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 286	C	3	Senator Justin C. Jones	Opening Remarks for Senate Bill 286
S.B. 286	D	72	Marc Randazza	Report to Senate on Proposed Changes to Nevada's Anti-SLAPP Laws
S.B. 323	E	1	Senator Joseph P. Hardy	Senate Bill 323 Suggested Amendment
S.B. 323	F	2	Ken Carabello	Jail-Based Restoration of Competency Program Fact Sheet
S.B. 323	G	2	Elizabeth Neighbors	Testimony in support
S.B. 296	H	1	Senator Michael Roberson	Government and Industry Affairs: Nevada
S.B. 296	I	1	Assemblyman Pat Hickey	Testimony in support
S.B. 296	J	2	Robert Compan	Testimony in support
S.B. 296	K	1	Property Casualty Insurers Association of America	Letter in support from Mark Sektnan
S.B. 296	L	4	National Association of Mutual Insurance Companies	Written testimony from Christian J. Rataj
S.B. 419	M	1	Diana Alba	Letter in support
S.B. 419	N	2	Amy Harvey	Letter in support